

238LT-00000000124

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IN THE MATTER OF TRADEMARK
APPLICATION SERIAL NO. 78/226,578
"TFS"
Published in the Official Gazette
December 2, 2003

06-01-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

TFS TECHNOLOGY AB

Opposer

v.

THREE-FIVE SYSTEMS, INC.

Applicant

Opposition No.

NOTICE OF OPPOSITION

To the Assistant Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

SIR:

TFS TECHNOLOGY AB, a corporation of Sweden, with a principal address at Stationsgatan 3, P.O. Box 2008, S-19502, Marsta, Sweden (hereinafter "Opposer"), believes that it would be damaged by registration of the mark "TFS", which is shown in U.S. Application Serial No. 78/226,578 and of which the owner of record is **THREE-FIVE SYSTEMS, INC.**, a corporation of Arizona, with a principal place of business at 1600 N. Desert Drive, Tempe, Arizona 85281-1212 (hereinafter "Applicant"), and Opposer, by its undersigned attorneys, hereby requests that registration of the mark "TFS" be denied on the following grounds:

06/03/2004 EPINA1 00000105 78226578

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300.00 OP

1. In U.S. Application Serial No. 78/226,578, Applicant seeks registration of the mark "TFS" for "liquid crystal microdisplays, for use by manufacturers in electronic equipment". The application was filed on March 17, 2003, and is based on Applicant's alleged bona fide intention to use the mark in commerce on said goods under Section 1(b) of the Trademark Act (15 U.S.C. §1051(b)).

2. Opposer has used its mark "TFS" alone and as part of other marks and trade names used in connection with computer related products and services in commerce in the United States since long prior to the filing date of Applicant's application for registration of "TFS" and therefore prior to any constructive date of use in commerce of Applicant's mark and, on information and belief, to any actual date of use in commerce of Applicant's mark. The trade names which Applicant has used in commerce in the United States include "TFS TECHNOLOGY AB" and "TFS TECHNOLOGY, INC.", and the marks which Applicant has used in commerce in the United States in connection with computer related goods or services include "TFS GATEWAY", "TFS TECHNOLOGY SOLUTIONS CONCEPT", "TFS UnixControl", "TFS ApplicationControl", "TFS DocumentControl", "TFS WorkstationControl", "TFS EmailControl", "TFS BoKS", "TFS SECURE MESSAGING", and "TFS Partnernet". Through activities involving its "TFS" marks and trade names in the United States, Opposer has developed considerable good will and customer recognition in its "TFS" marks and trade names.

3. Opposer is also the owner of U.S. Registration No. 2,273,249 for "TFS GATEWAY" for "computer software, computer diskettes, and CD-ROM's, all for monitoring electronic messaging, providing interconnectivity between electronic

messaging systems, platforms, and networks; regulating electronic messaging information flow, and for providing addressing, encryption, translation, and virus scanning for electronic messaging systems, and instruction manuals related thereto" in class 9 and "software consulting services and technical consultation in the field of computer engineering in class 42, claiming June 17, 1994, as the first date of use of the mark in commerce in connection with the goods and services. Said registration is "prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate". 15 U.S.C. § 1057.

4. In view of the similarity of the mark of Applicant and the marks and trade names of Opposer and the close relationship of the computer related goods and services offered under Opposer's "TFS" marks and trade names and the computer related goods to be sold under Applicant's "TFS" mark, purchasers or customers are likely to be confused as to the source of the products or services and mistakenly to attribute them to the same source.

5. Any defects, objections or faults found with Applicant's products sold under the "TFS" mark could inflict upon and seriously injure the reputation of Opposer and the good will established over the years in its "TFS" marks and trade names.

6. The grant of a registration to Applicant of the mark "TFS" would be in derogation of Opposer's prior rights in its "TFS" marks and "TFS GATEWAY" registration and thereby cause damage and injury to Opposer and cause confusion of the relevant purchasing public.

7. Applicant's "TFS" mark so resembles Opposer's previously used "TFS" marks and trade names and registered "TFS GATEWAY" mark as to be likely, when used in connection with Applicant's goods, to cause confusion, mistake or deception and thereby falls within the proscription of Section 2(d) of the statute, 15 U.S.C. § 1052(d) and should be denied registration.

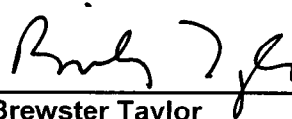
8. On information and belief, the good faith of Applicant's alleged good faith intent to use the mark in commerce is not apparent, and Opposer challenges the nature and sufficiency of Applicant's alleged intent to use the mark in commerce.

9. WHEREFORE, Opposer believes that it would be damaged by grant to Applicant of a registration on Application Serial No.78/226,578 and prays that the opposition be sustained and that registration be denied.

Enclosed herewith are a duplicate copy of the Notice of Opposition and a check in the amount of \$ 300.00 to cover the filing fee for the Notice of Opposition. If no check is enclosed the Commissioner is authorized to charge any fee or additional fee due in connection herewith to Deposit Account No. 12-0555.

Respectfully submitted,

STITES & HARBISON PLLC


Brewster Taylor

JUNE 1, 2004

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LETTER

Attached hereto for filing in the U.S. Patent and Trademark Office are the following:


1. ☒ NOTICE OF OPPOSITION (3 Copies)
2. ☒ Credit Card Payment (\$300.00 per class x 1 Class = \$300.00)

Enclosed herewith are copies in triplicate of a Notice of Opposition and a credit card payment in the amount of \$ 300.00 to cover the filing fee for the Notice of Opposition. If no payment is enclosed the Commissioner is authorized to charge any fee or additional fee due in connection herewith to Deposit Account No. 12-0555.

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Date: JUNE 1, 2004


Brewster Taylor
Suite 900
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UNITED STATES PATENT AND TRADEMARK OFFICE
Credit Card Payment Form

Credit Card Information

Credit Card Type:	AMERICAN EXPRESS
Credit Card Account Number:	3787 3903 4971 009
Credit Card Expiration Date:	12/09
Name on Credit Card:	L&T US PTO FEES
Payment Amount:	\$300.00

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EMAIL: **iplaw@larsontaylor.com**

Request and Payment Information

Description of Request and Payment Information:

Trademark Fee for: **NOTICE OF OPPOSITION**

Mark: **TFS**

International Class(es):

Applicant: **TFS TECHNOLOGY AB VS. THREE-FIVE SYSTEMS, INC.**

Client No.: **238LT**

Attorney Docket No.: **O0000000124/BT/trr**

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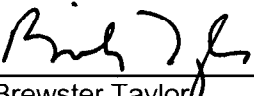
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Respectfully submitted,

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